

**Town of Lincoln**

**100 Old River Road, Lincoln RI**

**Zoning Board of Review**

**July 24, 2006 Minutes**

**Present: Raymond Arsenault, Kristen Rao, Gabriella Halmi, Jina Karempetsos, Arthur Russo, Jr., Nicholas Rampone, Town Solicitor Mark Krieger**

**Excused: David Gobeille**

### **Minutes**

**Motion made by Member Rao to accept the June 6, 2006 Executive Session Minutes as presented. Motion seconded by Member Russo. Motion carried with a 5-0 vote.**

**Chairman Arsenault asked if there any corrections to the June 2006 Minutes. Motion made by Member Russo to accept the Minutes as presented. Motion seconded by Member Russo. Motion carried with a 5-0 vote.**

### **Applications**

**Omnipoint Communications, Inc., 50 Vision Boulevard, East Providence, RI/St. James Church Corp., 33 Division Street, Manville, RI – Use Variance for the installation, operation and maintenance of a wireless communications facility on property located at 33 Division Street, Manville, RI.**

**AP 37, Lot 198 Zoned: RG 7**

**Omnipoint Communications, Inc., 50 Vision Boulevard, East Providence, RI/St. James Church Corp., 33 Division Street, Manville, RI – Dimensional Variance for front and rear yard setback and height relief for the installation, operation and maintenance of a wireless communications facility on property located at 33 Division Street, Manville, RI. –**

**AP 37, Lot 198 Zoned: RG 7**

**Represented by: Joseph Gianmarco, Esquire**

**Attorney for applicant addressed the Board stating his clients would like both of their applications continued to late October. Chairman Arsenault asked Attorney Gianmarco if the matters could be heard at the November 14th meeting and he replied in the affirmative.**

**Motion made by Member Rao to continue the Use Variance application to the November agenda. Motion seconded by Member Rampone. Motion carried with a 5-0 vote.**

**Motion made by Member Rao to continue the Dimensional Variance application to the November agenda. Motion seconded by Member Rampone. Motion carried with a 5-0 vote.**

**Judith Hughes, 8 Lantern Brook Road, Lincoln, RI – Dimensional Variance for rear yard setback for the construction of an addition.**

**AP 26, Lot 269 Zoned: RA 40**

**Represented by: John Shekarchi, Esquire**

**Chairman Arsenault read into the record correspondence from Attorney Shekarchi which stated that his client would like her application continued to the August 1st agenda because her expert witness, Edward Pimental, was not available to testify this evening.**

**Motion made by Member Halmi to continue the application to the August 1st agenda. Motion seconded by Member Rao. Motion carried with a 5-0 vote.**

**Valerie Girouard/Edward Diquinzio, 13 Hillside Avenue, Lincoln, RI – Dimensional Variance for rear yard setback.**

**AP 3, Lot 118 Zoned: RL 9**

**Chairman Arsenault read into the record correspondence dated June 29, 2006 from applicants to the Town Council stating that because their application could not be heard in a timely fashion they wanted to withdraw their application for a dimensional variance and have their documents and filing fee returned. Applicants were not present.**

**Russell Hervieux, Zoning Official addressed the Board to give them a history of events regarding the application. He stated he informed applicant that he could not return the materials, filing fee or stop the advertising of the application but told applicant he could appear**

before this Board and ask that the application materials be returned. Mr. Hervieux had told applicants that he needed to receive the application by a certain date in order for it to be heard at the June meeting – applicant turned in the application 3 weeks past due and was told it would be heard at the July 11 meeting. Because of conflicting schedules, the July meeting was continued to July 24th. The letter from applicant dated June 29, 2006 was delivered to Mr. Hervieux asking that all materials and filing fee be returned.

Motion made by Member Halmi to accept applicant's request to withdraw his application without prejudice. Motion seconded by Member Karempetsos. Motion carried with a 5-0 vote.

**W.P. Realty/L.B. Lincoln Mall Holdings LLC – Special Use Permit for Signage**

**Represented by: Joseph DeAngelis, Esquire**

Attorney DeAngelis was before this Board at the June meeting to address concerns by Russell Hervieux, Zoning Official regarding total existing square footage of signage at the Lincoln Mall. He informed this Board that his client sold the Lincoln Mall and this is the last piece that needs to be clarified for escrow purposes. He is back before the Board this evening to seek correction of the September 7, 2004 Minutes to reflect correct total square footage of signing at the mall. The only issue of disagreement is that Mr. Hervieux's signage table shows 392 feet for the two pylon signs and that is why he ordered a copy of the transcript which he presented to the Board for

their review. He stated that the pylon signs were not the subject of the application heard in September 2004 because they were in existence and feels there are only 4 square feet difference between his figures and Mr. Hervieux's signage table. If the new owners of the mall continue to develop, it will be their responsibility to come before this Board for relief. He suggested that perhaps the Board should take time to review the transcript and his signage table. There were four Lincoln Mall signs that were proposed but were never installed and that's where the confusion may be. The only disagreement between his client and Mr. Hervieux are the inclusion of the pylon signs in the total square footage.

Chairman Arsenault recommended that the Board put the issue to rest and would like to take a recess so members can look over the transcript and then reconvene to discuss the matter.

Motion made by Member Russo to table the matter and reconvene. Motion seconded by Member Rampone. Motion carried with a 5-0 vote.

Motion made by Member Halmi to reconvene. Motion seconded by Member Karempetsos. Motion carried with a 5-0 vote.

Chairman Arsenault read into the record correspondence from Attorney DeAngelis dated June 20, 2006 which included Board testimony from the September 2004 meeting regarding square

footage of signage at Lincoln Mall. Attorney DeAngelis stated the letter was self explanatory and requested the Decision dated June 28, 2006 be amended by adding the words "excluding the pylon signs." Chairman Arsenault stated it was clear what he said that night and those were comments around the pylon signs which indicates that he believed they were part of the total signage package that they were approving. Attorney DeAngelis replied that all of the signage requested was for new signs. The application and testimony dealt with building signage and not pylon signage. Total square footage for pylon signs is 392 square feet and by excluding the pylon signs there is only 4 square feet between his figures and Hervieux's figures.

Mr. Hervieux informed the Board that relief for the pylon sign for the cinema and lower entrance of the mall was granted on May 12, 1976; Special Use Permit for the other pylon sign was granted April 7, 1998.

Attorney Krieger addressed the Board stating does the Board feel that the presentation of the evidence from Attorney DeAngelis allows them to find that there was a neutral mistake both at the September 2004 and June 2006 meeting. This Board has the power to amend its findings as a matter of law and enter corrections in the Minutes. If the Board feels it does not have sufficient evidence before it to make that determination then the alternative would be for the new owner of the mall to come before the Board with a new application and present evidence for the Board to make a decision to grant or deny a

**dimensional variance for the square footage that encompasses the pylon. The pylons are in conformance by way of variances and special uses that were issued.**

**Motion made by Member Rao to amend the Decision dated June 28, 2006 and voted upon at the June 6, 2006 meeting amending the September 7, 2004 Decision for the Lincoln Mall Special Use Permit for signage shall read "...total mall complex signage excluding the upper and lower pylon signs totaling 392 square feet and are subject to separate relief by the Zoning Board shall not exceed the sum of 3443.3 square feet." Motion seconded by member Halmi. Motion carried with a 5-0 vote.**

**Motion made by Member Halmi to adjourn the meeting. Motion seconded by Member Rao. Motion carried with a 5-0 vote.**

**Respectfully submitted,**

**Ghislaine D. Therien  
Recording Secretary**